

# albania



*Hoxha, Memi & Hoxha  
Attorneys at Law*

albania

## Hoxha, Memi & Hoxha Attorneys at Law

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### **Firm's Practice Areas**

Antitrust and Trade, Corporate and Commercial, Dispute Resolution, Employment, Finance, Insurance, Intellectual Property, International and EU Law, Local Project Financing, Public Law, Real Estate, Tax

### **Firm Profile**

Hoxha, Memi & Hoxha is an Albanian law firm, focused on corporate and commercial law. The firm was established in 2003 by three Albanian lawyers, Western law graduates who have built up substantial experience in the new and

developing Albanian legal market. The firm's motto is quality legal services through professional standards.

The firm handles issues essential to carrying out economic activity. In this regard, the firm can provide professional services on a range of transactions including local project financing, capital formation, establishment of commercial companies, and the like. The firm's members also have an excellent understanding of and extensive experience in international trade regulation, concessions, real estate transactions, real estate development, intellectual property rights, competition and anti-dumping regulations, employment legislation and practice, contract law, customs and tax issues and the local financing market. The firm's partners also have significant litigation experience and can represent their clients before the judiciary.

The firm's members are proficient in several foreign languages, which facilitates communication with international clients investing in Albania.

The firm's clientele is representative of many areas of the economy including sectors such as insurance, real estate development, telecommunications, banking, transport, energy sector, pharmaceuticals, construction, and so on. Furthermore, the firm provides professional services to national and international public institutions.

The firm's philosophy is based on the belief that the highest professional standards are met through the total commitment to meeting the client's needs. As such, we make sure to properly and constantly assess the needs of our clients, which allows us to respond to them with many alternative solutions and complete answers.

## albania | corporate law

### Regulations and Rules

The framework for Albanian corporate law is comprised of the following laws:

- Law no. 7632 dated 04.11.1992 "Dispositions governing the first part of the Commercial Code,"
- Law no. 7638 dated 19.11.1992 "On commercial companies," and
- Law no. 7667 dated 28.01.1993 "On the commercial register."

Law no. 7632 is conceived as the first part of the future Albanian Commercial Code, and introduces general requirements concerning commercial activities, such as the definition of a "merchant" and "commercial activities," "transfer of activity" etc. This law contains also provisions concerning the Commercial Register and provides the requirements that entities have to meet in order to be registered.

Law no. 7638 dated 19.11.1992 "On commercial companies" regulates the forms of companies, while Law no. 7667 offers detailed provisions on the Commercial Register and the registration of commercial companies.

### Types of Companies

Law no. 7638 "On commercial companies" lists four types of commercial companies: unlimited partnership (Shoqeri Kolektive), limited partnership (Shoqeri Komandite), limited-liability company (Shoqeri me Pergjegjesi te Kufizuar, abbreviation "Shpk."), and joint-stock company (Shoqeri Anonime, abbreviation "Sha.")

The most frequent type of company in Albania is the limited-liability company (Shpk.) This type of business organization seems to be the most successful and operational due to certain characteristics such as: shareholders are responsible

for losses only to the extent of their contribution to the company share capital; there are no restrictions in the number of shareholders; the initial capital requirement for the establishment is fairly low; it provides for the existence of a simple and efficient system of management (only one or more administrators). Furthermore, the appointment of external auditors is not always compulsory, but only when the law expressly requires.

Albanian law also permits establishment of a branch of a foreign company.

### Liability of Shareholders

According to law no. 7638, shareholders of an unlimited partnership are jointly liable, without limit, for the company's obligations. Company creditors can assert claims against a shareholder's personal property for the debts of the company only after their claims against the company's property as a whole have failed.

In a limited partnership, shareholders are of two kinds: shareholders with unlimited liability and shareholders with limited liability. The unlimited shareholders have personal and joint unlimited liability for all company obligations, while limited shareholders are responsible for the company's obligations only with their contribution to the capital.

The liability of shareholders in joint-stock and limited-liability companies is limited to the extent of their contribution to the company's capital.

### Share Capital

Law no. 7638 "On commercial companies" provides no minimum share capital for an unlimited partnership or limited partnership. The minimum share capital for a limited-liability company is currently set at Lek 100,000 (approximately EUR 800), while the Law requires minimum share capital for a joint-stock company of Lek 2 million (approximately EUR 16,000). The Law requires minimum share capital of Lek 10 million (approximately EUR 80,000) if the joint-stock company is established according to the procedure for public offer of shares.

The Law requires that shareholders of a limited-liability company shall pay their contribution to the share capital, in cash or in kind, as of the establishment of the company. For contributions in cash, shareholders must pay up immediately at least  $\frac{1}{2}$  of the nominal value of the subscribed shares. Contributions in kind should be fully paid at the moment the company is established. Contributions in services are not permitted in joint-stock or limited-liability Companies.

### Classes of Shares

Shares of a joint-stock company can be registered or bearer shares. The bylaws may provide for preferred shares. Shares paid in cash are "registered" until their entire nominal value is paid by the shareholder. Shares of other types of companies are ordinary and cannot be represented by securities.

### Corporate Governance

#### SHAREHOLDERS MEETINGS:

Decisions reserved to the Shareholders: According to Law 7638 "On commercial companies," shareholders approve amendments of company bylaws, increase or reduction of the share capital, company winding-up or dissolution, M&A. Furthermore, shareholders must approve the financial statements of the company, resolve on the distribution of profits, on the appointment and dismissal of directors, auditors and company liquidators.

Minimum numbers of board meetings: According to Albanian legislation, the Shareholders' General Meeting must convene at least once per year, for the approval of financial statements.

#### Changing the By-Laws:

- Increasing the share capital: by a resolution of at least 3/4 of the shareholders;
- Reducing the share capital: by a resolution of at least 3/4 of the shareholders;

- **Assignment of interests (transfer of shares or participations):** shares in joint-stock companies are transferred freely, unless the bylaws provide differently, while in a limited-liability company [assignment requires approval of] shareholders holding 3/4 of the capital;
- **Authority to bind the company:** Appointed Directors;
- **Changing the company's official signatures:** Resolution of at least 1/2 of the shareholders upon appointment of directors;
- **Changing the corporate purpose:** Resolution of at least 3/4 of the shareholders.

#### DECISION-MAKING BODIES:

Appointment of Directors: Directors are appointed by a resolution of at least  $\frac{1}{2}$  of the shareholders. Joint-stock companies are managed according to a two-tier system (Supervisory Board:  $\frac{2}{3}$  of members appointed by Shareholders and  $\frac{1}{3}$  appointed by company employees; and Board of Directors: members appointed by Supervisory Board).

Powers of Directors: Directors have unlimited powers within the purposes of the company, unless otherwise provided by the Bylaws.

Minimum number of independent Directors: Albanian law does not provide for a minimum number of independent directors.

Term of Appointment: Directors of joint-stock companies are appointed for a maximum term of 6 years. Term of appointment of Supervisory Board members is 6 years, while the term of appointment of members appointed by employees is 3 years. Directors of other types of companies are appointed without term limits unless otherwise provided by the shareholders.

Scope of Directors' Liabilities: Directors are individually or jointly liable for breach of the law, of the company's Bylaws, and for misconduct during the fulfillment of their duties.

Directors' Fees: Albanian legislation does not provide specific rules for the disclosure and determination of Directors remuneration. Albanian legislation does not provide any limit on Directors' remuneration.

#### ANNUAL ACCOUNTS-FINANCIAL AND OPERATING RESULTS: DUTIES AND LIABILITIES:

Necessary Documents: Balance sheet & Financial statements.

Deadline for delivery of documents: Six months from closing of financial year (please note that according to tax legislation, the financial statements and balance sheets should be presented to the tax authority by 31 March).

Authentication: For joint-stock companies and certain larger limited-liability companies, an audit by independent auditors is required.

Statutory Audit: The by-laws of a company may provide for auditing even if not required by law.

#### Quoted Companies

Although the law provides special provisions for quoted companies, no quoted companies have come in to existence so far in Albania.

## albania | tax law

Albania has conducted a major modernization of its tax legislation. The process started in October 1997 with changes to VAT, which had been established in mid-1996, replacing the turnover tax. The initial tax rate of 12.5 percent was increased to 20 percent and most exemptions were abolished. In December 1998, a new law on personal income tax and tax on profits was introduced. New tax rates for personal income tax were established in December 2000. A modern system of collection of tax on profits and the withholding tax on dividends, interest, and certain services has been introduced.

In January 1999, a new Customs Code came into force. This code is simpler to apply and narrows the scope for individual interpretation. It has been designed to comply with WTO requirements.

Recently the Albanian tax legislation continues to experience constant changes in order to adhere with international tax policies and EU standards.

### CORPORATE TAXES

#### Taxes on Corporate Income

Corporations conducting business in Albania are subject to profit tax at a flat rate of 23% for year 2005 and at a rate of 20% for 2006 and thereafter. Tax is levied on any domestic or foreign legal entity which has a permanent establishment in Albania. While residents pay tax on all taxable income sources, non-residents pay tax only on income generated within the territory of Albania.

#### Permanent Establishment, Branch or Affiliate

A permanent establishment can be an office, a mining site, a branch, a plant, or a construction or installation work (lasting more than 9-12 months).

The income generated from the branch will be part of the income generated from the parent company in its consolidated financial statements. The branch is fully

taxed in Albania (at 23%) and can accept transfer of expenses from the parent company, subject to some tax constraints.

There is no clear distinction between a branch and an affiliate. However an affiliate can be legally recognized as an independent entity from the parent company and is responsible only to the extent of its own capital and not that of the parent company.

#### Income Determination

Determination of taxable base starts with the profit shown on the profit and loss account of the corporation. For purposes of tax on profit, some expenses are not deductible (cost of fringe benefits, a percentage of representative expenses, voluntary pension contributions, capital contribution, penalties, personnel allowances higher than set rates, etc).

Taxpayers are obliged to declare the use of their annual profit for tax purposes, not later than July 1 of the subsequent year.

#### Depreciation

There are two methods of depreciation; the straight-line method and the pooling system.

The pooling system is applied for computers, information systems, software products, and backup systems (25%).

The straight-line method is applied for costs of purchase or construction, costs of improvement, restoration, and reconstruction of buildings, long term fixtures and fittings and machinery and equipment at a rate of 5 percent; for intangible assets at a rate of 10 percent; and for all other depreciable assets of the business at a rate of 20%.

Depreciation allowances are not granted on land, works of art, antiques, jewelry, precious metals and gems.

#### Other Income-Related Issues

Reserves are not allowable deductions for tax purposes, however banks and insurance companies are allowed to deduct reserves and provisions required by their regulatory bodies.

Losses may be carried forward for 3 years. However, this does not apply when there are changes in ownership of more than 25%.

## VAT

Taxable persons are all individuals and legal entities registered, or required to be registered, for VAT: any person making taxable supplies and having an annual turnover in excess of Lek 8 million (about EUR 64,000) is required to register. For individuals and legal entities that operate in the import/export sector it is mandatory to be registered regardless of annual turnover.

The rate of VAT is 20%. Exports of goods and services (in case the services are supplied outside the territory of Albania), and sales related to international transport are at the zero rate.

In contrast to a transaction involving an exempt sale, input VAT could be recovered in the case of a zero-rated sale.

There are some sales exempt from VAT (lease and sale of land, financial services and life insurance services, education services, certain services from non-profit organizations, diplomats, research and oil operations, medicines and medical equipment, sale of newspapers or magazines and advertisements therein, import of goods under the transit/temporary/outward processing regime, etc.)

Importation of machineries and equipments to be invested for production activities and building or telecommunications activities can profit from the deferred payment system, under which system VAT on such machineries and equipments does not have to be paid at the Customs Office at the moment of importation.

The tax credit for a tax period is the total VAT in respect of all VAT sales made to the taxable person, and all importation of goods made by the taxable person, during the tax period, where those sales or importations were made for the purposes of VAT sales made or to be made by the taxable person.

The tax credit cannot include the VAT on fuel/car purchase, on other car related services and on allowances and travel. This VAT cannot be recoverable and is disclosed as an expense for the company.

Reimbursement of VAT is allowed if the excess tax credit is carried forward for three successive months and the claimed reimbursement exceeds Lek 400,000 (about EUR 3200).

Exporters have the right to claim VAT refunds if their VAT credit exceeds Lek 400,000 (about EUR 3200), and the tax authorities are obliged to make the refund within 30 days from the date of the taxpayer's written request.

## Small Business Tax

Individuals and legal persons whose annual turnover is less than Lek 8,000,000 (about EUR 64,000) are subject to a simple profit tax at the rate of 3%. They are also obliged to pay the annual local tax which varies based on the type of business and the city where the economic activity is carried out.

## Tax Administration

### RETURNS

If there is a tax credit, a return can be applied (for profit tax, VAT, simple profit tax, social security contributions),

### PAYMENT OF TAX

Profit tax is prepaid following an evaluation scheme, in monthly installments and the final calculations are settled by March 31 of each year, on submission of the year-end financial statements. VAT is paid on a monthly basis, by the 14th day of the subsequent month, whereas simple profit tax is paid in four installments during the year.

## Capital Tax

The capital tax is a tax on capital gains and is applicable when the shareholder/owner decides to sell shares or stocks or during liquidation of the company, on the difference between the nominal (or purchase) value of the shares/stocks and their selling value. The income for investment is taxed as any other income generated from the normal economic activity of the taxpayer.

## Transfer Tax

The transfer tax is applicable on the transfer (sale or gift) of real estate according to table 1, whereas the tax on the transfer of agricultural land is equal to 0.5% of the value of the transaction.

SELLING PRICE	TAX PAYABLE	
	To (leke)	Percentage
Over (leke)		
0	2,000,000	0.5% of the sale price
2,000,000 +	4,000,000	1% of the sale price
4,000,000 +	6,000,000	2% of the sale price
6,000,000 +	And up	3% of the sale price

When the taxable person decides to transfer all his economic activity to a third party, the transfer is VAT exempt (in case the taxable person is VAT subject), but is subject to profit tax.

## Property Tax

This tax is levied separately on agricultural land (twice a year, in August and November), and on buildings. Exempt from this tax are persons affected by natural disasters such as floods, buildings let at controlled rents and the property of international organizations. The state pays in full the respective liability for low income families receiving social assistance.

## Excise Tax

Excise tax is applied on a limited number of goods such as tobacco, cigarettes, alcoholic and other beverages, derivatives of petroleum, coffee and cosmetic articles, and perfume. For goods produced in Albania, the excise tax is calculated on the basis of the value of each group of goods sold. For imported goods this tax is calculated on the customs value including import duty. Excise tax is not applied when goods are exported. Also exempt from this tax is liquid gas used for household consumption. Tax is levied as a percentage rate (only for perfume) or per unit stamp duty.

## Customs Duties

Imports are charged duty according to their classification in the 6-digit Harmonized System. For many imported items minimum custom values are applied. Major exemptions are applicable for goods imported under government agreements, certain imports for contractors in oil exploration; humanitarian aid, imports of personal living goods.

The tariff nomenclature contains three tariff rates (0, 5, 10).

## Other National and Local Taxes

There are a variety of national and local taxes and fees. These include port charges, consular fees, TV and telephone licenses, driving license fees, hotel tax (for foreigners), airport arrival and departure tax, business registration tax, environmental tax, advertising tax.

## Double Taxation Treaties

Income taxes paid abroad by residents, whether individuals or entities, are credited to tax amounts due in Albania in accordance with the provisions of tax law. The income generated from services rendered by non-residents in Albania exempt from direct taxes (profit tax, withholding tax) is based on the tax treaties in force, entered into between Albania and other countries.

Country	Dividends	Interest	Honoraria
Belgium	5% dir.div if > 25% ownership; 15% (other cases)	5%	5%
Bulgaria	5% dir.div if > 25% ownership; 15% (other cases)	10%	10%
Croatia	10% all	10% (with some exemptions)	10%
Czech Republic	5% dir.div if > 25% ownership; 15% (other cases)	5%	10%
France	5% dir.div if > 25% ownership; 15% (other cases)	10% (with some exemptions)	5%
Greece	5% all	5%	5%
Hungary	5% dir.div if > 25% ownership; 10%(other cases)	0%	5%
Italy	10% all cases	5%	5%
Macedonia	10% all cases	10%	10%

Malaysia	5% dir.div if > 25% ownership; 15% (other cases)	10% (with some exemptions)	10%
Malta	5% dir.div if > 25% ownership; 15% (other cases)	5%	5%
Norway	5% dir.div if > 25% ownership; 15% (other cases)	10% (with some exemptions)	10%
Poland	5% dir.div if > 25% ownership; 10% (other cases)	10%	5%
Rumania	10% dir.div if > 25% ownership; 15% (other cases)	10%	10% (technical fees 10%)
Russia	10% all cases	10%	10%
Sweden	5% dir.div if > 25% ownership; 15% (other cases)	5%	5%
Switzerland	5% dir.div if > 25% ownership; 15% (other cases)	5%	5%
Turkey	5% dir.div if > 25% ownership; 15% (other cases)	10% (with some exemptions)	10%

With Belgium and France, the double taxation treaties are signed but not yet in force, whereas with Egypt, the Netherlands, Serbia, Montenegro, Iran, China, Korea and Kosovo, treaties are negotiated and initialed at the technical level but not yet signed.

### Tax Incentives

A taxpayer who operates a manufacturing business is not liable for advance payments of profit tax for the first six months of activity, or for the remaining period until the end of the fiscal year, when the latter period is less than six months.

A company may obtain potential tax incentives in case it becomes a promoted person in the field of tourism investment such as the exemption from the tax on profit for the first 5 fiscal years and pay 50% of such tax during the next 5 years.

### Withholding Taxes

FROM	TO	RATE
DIVIDENDS		
Resident Company	Resident Individual	10% (final)
Resident Company	Resident Company	10%*
Resident Company	Non-resident ind./comp.	10% (or less as per tax treaties in force)
PROFIT SHARING		
Resident Partnership	Resident Individuals	10% (final)
Resident Partnership	Other	10%
INTEREST		
	Resident individuals	10%
	Non-resident ind./comp.	10% (or less as per tax treaties in force)

\* No withholding tax is imposed on dividends distributed to a resident company that owns more than 25% of stocks in the other resident company paying these dividends.

**Other Payments:** For other payments defined in the tax law, such as payment for technical and management services, artistic performances, royalties, construction and installation services, rent services on buildings owned by an individual or non-resident companies etc., there is a 10% withholding tax.

### INDIVIDUAL TAXES

Under Albanian law, all individuals are liable to income tax. While residents pay tax on all taxable income sources, non-residents pay tax only on income generated within the territory of Albania. Residents are considered to be persons who stay in Albania, in aggregate, for a period or periods exceeding 183 days in a tax year.

Each individual who generates income from any source which is subject of taxation on personal income, and for which the withholding tax has not been withheld, must declare this income to the tax office no later than January 30 of the next year.

### Taxable Categories of Income

- Wages, salaries and other compensation derived from labor relations;
- Dividends;
- Interest from bank deposits and other interest-bearing securities;
- Income from copyrights and royalties;
- Income from loans and leasing, excluding cases when this income is generated through commercial activity, which is subject to commercial legislation;
- Income from lottery games and casinos (20%);
- Income from sale of real estate.

### Exemptions

- Income subject to the small business tax (income from self-employment and from trade and service activities of individuals);
- Income of individuals who enjoy diplomatic status;

- State unemployment benefits, pensions and other transfers;
- The first Lek 14,000 (about EUR 112) of monthly wages.

Gross salaries and compensations for employees will be taxed as follow:

Taxable income (on monthly basis)		Personal income tax	Percentage
Over (Lek)	Until (Lek)	Lek	
0	14,000		Exemption floor (minimum)
14,000 +	40,000	0	+ 5% of sum over Lek 14,000
40,000 +	90,000	1,300	+ 10% of sum over Lek 40,000
90,000 +	200,000	6,300	+ 15% of sum over Lek 90,000
200,000 +	500,000	22,800	+ 25% of sum over Lek 200,000
500,000 +	on	97,800	+ 30% of sum over Lek 500,000

### Social Security Taxes

The Public Institute of Social Welfare manages the Albanian social welfare system. The Institute operates under the jurisdiction of the Council of Ministers. The tax authorities have been collecting and enforcing collection of social contributions on behalf of the Institution since April 2004. The company contribution includes (i) contributions to work accident indemnities, and (ii) unemployment fund. Employees are responsible for a percentage of both health and social insurance contributions. Only a portion of the gross monthly salary, between Lek 11,376 (about EUR 91) and a ceiling of Lek 56,881 (about EUR 445) per month, is subject to contribution, at the following rates:

	Social Security	Health insurance	Total
Paid by the company	29%	1.7%	30.7%
Paid by the employee	9.5%	1.7%	11.2%

## albania | foreign investment

The Albanian market has opened to foreign investments since 1991. Nevertheless, it was Law no. 7764 dated 02.11.1993 that constituted the regulatory framework for foreign investments in Albania. This law and further legislative acts provided for the promotion of foreign investments in Albania by granting equal treatment and protection and a range of tax incentives for such investments. At present such tax incentives are no longer in force following the adoption of several amendments to laws on foreign investment and taxes.

However, the Albanian legislature is still concerned with the issue of encouraging foreign direct investment in Albania. In 2003, the Agency for the Promotion of Foreign Investment was established, which offers administrative and legal support to foreign investors who wish to invest in Albania.

The Albanian tax authorities have also signed tax treaties with many countries so as to facilitate the establishment of foreign investment enterprises in the country.

### Registration, Authorizations and Permits

Foreign investment in the Republic of Albania is not subject to prior authorization. It is permitted subject to conditions no less favorable than those that apply to domestic investment in similar circumstances, excluding ownership of land, which is regulated by a special law.

Albanian law specifically provides that, in all cases and at all times investments have equal and impartial treatment, and full security. A company with foreign investment has the right to employ Albanian and foreign citizens.

According to the law, foreign investments may not be expropriated or nationalized, directly or indirectly, and will not be subject to any measure or similar action, except for public purposes determined by law. Foreign investments

will be treated in a nondiscriminatory manner and paid immediately, in a fair and effective manner, and in accordance with due process of law.

In case of expropriation and nationalization, the law provides that the compensation will be equivalent to the fair market value of the expropriated investors. The compensation will be paid without delay and includes interest at the commercial market rate from the date of the expropriation; the compensation is fully transferable abroad and convertible at the market rate of exchange on the date of the expropriation.

Foreign investors whose investments suffer losses due to war, armed conflict, a state of national emergency or other similar events, are treated no less favorably than the treatment awarded to Albanian investors regarding measures adopted in relation to such losses.

### Repatriation and Other Transfers Abroad

Foreign investors have the right to transfer out of the territory of the Republic of Albania all assets related to a foreign investment, including as follows:

- revenues,
- compensation,
- payments as a consequence of an investment disagreement,
- payments made under a contract, including loan and interest payments according to a loan agreement,
- revenues stemming from the sale or the payment of any or all part of an investment,
- return of shareholders' equity, resulting from the reduction of capital when the company has decreased its capital according to Albanian legislation.

Foreign investors have the right to make transfers out of the territory of the Republic of Albania to a freely convertible currency calculated at the prevailing spot market rate on the date of the transfer.

### Status of Foreign Personnel

Law no. 8492, dated 27.05.1999 "On Foreigners" regulates the entry, exit, visa requirements, residency and employment of foreigners. The Law sets forth criteria for considering a person to be "persona non grata" and refusing an entry visa and residence permit. This law determines what documents a foreign citizen should possess when entering Albania and types of visas issued by the Albanian authorities. Foreigners who enter Albania without a visa or those with a visa may apply for a residence permit which varies from 3 months up to 5 years and permanent residency. Residence permits are issued by the Ministry of Public Order. Foreigners who would like to work in Albania for more than 3 months should obtain a work permit. Work permits are issued by the local Labor Office under the Ministry of Labor and Social Affairs. Both residence permit and work permit are issued not later than 30 days from the filing of the request to the competent authorities.

Article 41 of the Law exempts from the work permit obligation specific categories of foreigners such as diplomats, representatives of NGOs, general managers and executive directors of foreign companies carrying out activity in Albania, employees of foreign companies working in their branches or subsidiaries in Albania, lecturers, correspondents and others. If a foreigner is refused a work permit, he may appeal within 5 days from receipt of the written denial to the Minister of Labor and Social Affairs. The Law does not provide for any appeal procedure in case a foreigner is refused a residence permit.

According to the Law, a residence permit is supposed to be issued within a month from submitting the documents to the residence permit office. Due to bureaucratic delays, the authorities do not meet this deadline in practice.

## albania | labor law

The Albanian Labor Code of 1995 establishes a statutory foundation for employment rights, such as the right to a minimum base salary, the right to continue receiving bonuses after the first three years, the length of the working day, holidays, work schedule, working conditions and other employment benefits such as sick leave, maternity leave, child care leave, etc. Although the new Code was supposed to bring reform with respect to improved protection of employers' interests, it still provides relatively generous entitlements. It also contains extensive occupational health and safety requirements. Almost all labor disputes sent to the District Courts deal with termination of labor contracts and almost all such disputes are won by employees. The penalty imposed on employers in most of the cases is to pay the dismissed employee an annual salary.

### Employment Contracts

#### CLASSES

Types of contracts are individual, or collective for a group of employees; with a defined term, open or part-time; for a set work and specific services. Part-time employees enjoy benefits on a pro-rata basis. The contract must be in writing, but oral contracts are also accepted, provided that within 30 days a written agreement will follow. The contract is effective as of the date the parties have agreed orally.

The Labor Code also protects the rights of employees to unionize, bargain collectively, and enter into a collective labor contract (CLC) at the national, sector or enterprise level, with each level to provide benefits as least as generous as those of the higher levels. A collective labor contract at the enterprise level constitutes the legal framework for individual labor contracts (ILCs) with employees. A collective labor contract may have a definite or indefinite term. Even after its expiration, unless expressly provided otherwise, the terms of a collective

labor contract remain binding upon the ILC negotiated and executed by reference to its terms. Management is required to negotiate with the trade union, but the Labor Code does not expressly include such obligation.

Most of the staff of small and medium-sized enterprises (SMEs) are employed under an oral labor contract and most of the labor contracts with a definite term are not periodically renewed, constituting thereafter indefinite term labor contracts. The one-year term, three-month term or six-month term contracts remain in force even after the term (less than one-year) expires, because it is assumed that the parties have tacitly renewed the contract (Article 149/2 of the Labor Code). The contract should contain the main elements provided for by the Labor Code and also the disciplinary measures imposed on the employee in case of breach of the terms and the conditions of the Labor Contract.

#### COST OF DISMISSAL AND WRONGFUL DISMISSAL

Under the Labor Code, causes for termination include economic factors or restructuring, which may not be an excuse for replacing one worker with another. In general, there is no severance pay entitlement.

Termination of an ILC is strictly regulated, and includes a number of required steps (notification, discussion, second notification) and entitlements (cause, seniority bonuses). There are additional special provisions governing collective dismissals.

Early termination applies in case of abandonment, dismissal, or employee's death. If a dispute is brought before the courts for termination, the court examines whether the circumstances prove the dismissal for cause or without cause, and decide accordingly on financial consequences. An employee can terminate the contract with immediate effect and without cause and he shall have to pay up to a week salary and also the amount of the damage caused, which is the difference between the damage and one week's salary. Termination notice is one month for the first year; two months for 2 to 5 years and three months for contracts over 5 years. Nevertheless, the Code provides that the notification period may be changed by mutual written agreement between the

parties (employer and employee). The notice term shall not be counted in case of illness, temporary invalidity and pregnancy. Parties can immediately terminate the contract for justified reasons.

Considering the term of employment contracts they are divided into fixed-term contracts and indefinite-term contracts.

If an employee has had a fixed-term contract with the employer and after such contract is terminated he has entered into an indefinite term contract, the notification period for terminating the employment contract will cover the whole period the employee has been working for that employer (whether with a fixed-term contract or an indefinite-term contract).

An employment contract with indefinite term terminates when it is rescinded by one party and the notification period has expired.

During the first year of employment, the notification period is 1 month. For 2 to 5 years of employment, the notification period is 2 months, and for more than 5 years of employment the notification period is 3 months. These terms may be changed by written agreement of both parties provided that the notification period is not less than 15 days if the employee has been working for less than 6 months and not less than 1 month if the employee has been working for more than 6 months. Thus, the parties may provide in the employment contract another notification period in compliance with the above specifications.

If the employer would like to terminate an employment contract, he has to deliver to the employee prior written notice taking into consideration the notification period provided by the Labor Code or the employment contract. In addition to such notice, the employer should hold a meeting with the employee notifying him in writing at least 72 hours in advance. During the meeting the employer should discuss with the employee the reasons which led to termination of the contract and should listen to the employee's objections. Termination of employment contract is communicated to the employee in writing at least 48 hours after the conversation. For justified and serious reasons, employer may dismiss the employee during the meeting procedure.

Any termination of employment contract in breach of the abovementioned procedures and terms is considered invalid and makes a strong case for the employee to file a lawsuit against the employer. The employee will receive payment for annual leave and any other paid holiday not exhausted by him.

In case the employee claims the termination contract is made without due cause by the employer, or the employer did not comply with the notification period and procedure set forth by the Labor Code, the employee may file a lawsuit against the employer. Under the Labor Code, the competent court is the authority entitled to settle the disputes arising out of labor relationships.

Termination may happen before the defined term in the contract of employment in case of abandonment by employee, dismissal, employee's death, or expiration of the contract or probationary period. If a court determines the dismissal to be unjustified, the employer can be required to indemnify the employee with up to a yearly salary. If the employee terminates the contract immediately for unjustified reasons, he/she shall be responsible to give back up to one week's salary to employer.

The employer may not dissolve the job contract during the period the employee has been awarded leave for temporary incapacity to work for a period no more than 1 year.

In case the dissolution of the contract is made before the period of temporary disability leave and the employee during the period of notification from the employer receives this kind of leave for a period less than 1 year, the notification period is interrupted for the duration of disability leave and continues after the end of the leave.

In case of contract dissolution without complying with the notification period, the dissolution shall be considered as one with immediate effects.

In case the employer does not comply with the provisions of the Labor Code regarding the dismissal procedures, the dissolution shall be considered as not valid and the parties to the contract enjoy the same rights and obligations as

before the dismissal. In this case the employee may claim to the competent court the invalidity of dismissal and if the court finds the claim to be reasonable, it is entitled to award to the employee a remuneration of up to one-year salary.

The dismissal procedure provides that in case the employer wants to dissolve the job contract with immediate effects, the employer should notify the employee in a written form at least 72 hours before meeting with him. The dissolution is notified at least 48 hours after the meeting. The notification should be in writing.

#### EMPLOYMENT CONTRACTS FOR DIRECTORS

The Albanian Labor Code is not applicable to the members of the Board of Directors or councils to the Board of Directors. It is however applicable to the officers of the Executive Board. In both cases, no special regime is provided for by the law.

### Employees' Representatives and Union Representation

The freedom to be associated in trade unions is considered important enough to be guaranteed by the Albanian Constitution and the Labor Code. Discrimination against an employee in relation to participation in a trade union is expressly prohibited by the Labor Code. The employer or an employer's organization, as well as any state administrative body cannot interfere with the activities of a labor union.

When a Labor Union representation becomes binding is not specifically provided for by the Albanian Law.

According to the Labor Code, the employer has the obligation to create the necessary conditions for the labor union representatives to exercise their activity. The functions of the labor union representatives are specified in the collective labor contracts. The employer must i.e. give the representatives the necessary time to take part in union activities, must permit them to collect membership dues, to organize meetings and other activities and to spread the necessary information concerning these activities (flyers or any other form of information).

Furthermore, the employer can not terminate the individual labor contract of a labor union representative without the approval of the union, unless the representative has been acting against the law, the collective labor contract, the individual labor contract or unless the employer proves that the termination is necessary to the economic activity of the enterprise. The same goes for change of the terms and conditions of the individual labor contract of the representatives.

### Collective Bargaining Agreements

A CLC can be concluded at the national, sector, or enterprise level, with each level to provide benefits as least as generous as those of higher levels.

The collective agreements are binding for every employer that has signed them. Once signed by the employer, the collective agreement becomes binding vis-à-vis every employee, whether or not the employee is member of a labor union. When the employer is no longer a member of the contracting organization, it must respect the collective agreement until the termination date, but no more than three years after it leaves the organization. The collective agreements signed by the employer are binding for all the individual labor contracts with its employees. Any provision of an individual labor contract that is less favorable to the employee than the collective agreement is invalid and is automatically replaced by the respective collective agreement provision.

### Wages and Other Types of Compensation

#### CLASSES OF WAGES

Salary may be based upon the number of hours worked, in accordance with work performed (e.g., commission or piece work), or profit sharing. Other benefits such as housing and transportation to and from work may be included.

## MINIMUM SALARY IN 2005

The Council of Ministers decides every year upon the amount of the minimal wage. For the year 2005, the minimum monthly salary is set at Lek 10,800 (about EUR 86).

## COST OF OVERTIME HOURS

Normal working time between is 40 and 48 hours per week. For any working hour in excess of normal time, and during holidays, employees are entitled to premiums varying from 25 to 100 percent of the fixed salary. Overtime is paid, but such payment may not be requested until after 50 hours have been worked in one week.

## Social Security

### CONTRIBUTION FORMS

Social security contributions are payable by the employer and the employee for retirement, invalidity and disability pensions, and sickness, and maternity benefit. Only the employer pays contributions for unemployment and work related accident or disease benefits. The social security contribution of the employees must be withheld at the source by the employer each payroll.

### SOCIAL SECURITY COST FOR THE COMPANY

Social security contributions for the employer amount to 30.7% of the calculation basis. The calculation basis is determined by decision of the Council of Ministers and consists of a minimum amount of Lek 11.376 (about EUR 91) and a maximum amount of Lek 56.881 (about EUR 455). If the monthly wage is under the minimum limit or above the maximum limit, the calculation base will be the limits themselves. If the monthly wage is situated within the limits, the calculation basis will be the effective monthly wage.

## SOCIAL SECURITY COST FOR THE WORKER

Social security contributions for the employer amount to 11.2% of the calculation basis. The calculation basis is determined as stated above.

## SOCIAL SECURITY ON OVERTIME

Overtime salary is considered as income and contributions to social security are calculated in the same manner as for normal working hours.

## Health and Safety

The employer is responsible for safety at the workplace. He must take the necessary measures to prevent illness and accidents and must approve the necessary internal technical regulations to this effect.

The above mentioned duties of the employer in relation to the safety conditions at the workplace are provided for by a series of provision of the Albanian Labor Code.

## Contracting and Outsourcing of Work Services

Albanian law contains no special provisions on this issue.

# albania | real estate

## Types of Ownership

As a country in the civil-law tradition, the Albanian Civil Code provides for two forms of property:

- **Sole ownership** (art. 64 ss) - one person is exclusive owner of the real estate; or
- **Joint title of ownership** (art. 92 ss) - two or more persons are owners of the real estate in equal or non-equal parts.

Such joint title of ownership may be determined:

- by contract (i.e. land purchased jointly in equal parts by two commercial companies), or
- by law (common spaces of buildings - stairs, hall spaces, roof; property acquired during marriage, or property of agricultural families).

Ownership on real estate may be limited by various real rights such as: usufruct, right of use, right of habitat and servitudes, all provided for in the Albanian Civil Code.

## Land Register

Article 144 of the Albanian Civil Code provides for the registration of any real estate and of all other real rights that limit such real estate in a specific register for real estate.

Law no. 7843 dated 13.07.1994 "On registration of real estate" regulates the registration of real estate in Albania. According to this law, Real Estate Registration Offices (RERO) are set up in every administrative centre of each real

estate registration district, as determined by the Council of Ministers. Currently there are 35 offices operating in every administrative district in Albania. Each of the offices is responsible for the administrative territory where it is situated.

Law no. 7843 provides that an RERO is directed by a Head Register, who is appointed by the Council of Ministers. The RERO keeps all registers of real estate, the register of maps of the administrative zones and all contracts of transfer, court decisions, mortgages, inheritance and other legal documents which affect rights to real estate as well as survey plans, indexes of these records and other records necessary for the management of the real estate registry.

Each volume of the register book in the immovable property registry shall include a folder for each piece of real estate.

Law no. 7843 provides that any contract or other legal documents affecting rights to real estate shall be registered no later than 30 days from the time the documents have been executed. It is the duty of the register to verify the boundaries, areas and location of properties as well as to correct any possible error in the registry index map that does not affect the interest of any person.

## Reliance on Registry

The activities and the management of RERO in Albania are characterized by excessive bureaucracy and corruption. Nevertheless, transfer of property is not complete until the registration with RERO.

## Transfer Formalities

According to article 83 of the Albanian Civil Code, the document necessary for the transfer of ownership of real estate should be certified by a notary deed and should be registered with the RERO. The title of ownership is transferred upon completion of both procedures.

## Mortgages

According to the Albanian Civil Code (articles 560 ss), mortgage is a real right over the property of the debtor or a third party in favor of the creditor, in order to ensure the fulfillment of an obligation. The law provides that mortgages may be registered on real estate or on usufruct of real estate.

A mortgage can be created on the basis of:

- a contract (loan guarantee);
- law (mortgage in favor of the seller of real estate or mortgage of the heirs on the real estate of the inheritance);
- a judicial act (court decision determining a pecuniary obligation).

A contractual mortgage is created by notary deed. A mortgage needs to be registered with RERO. A mortgage is valid for a term of 20 years.

The mortgagee, in case the debt is not paid, has the right to request the sale of the mortgaged property and pay off the debt as well as relevant interest and penalties. The execution of the mortgage is done only after the issuance of a court enforcement order and the sale is performed by public auction by the bailiff's office.

## Restrictions on Acquisition

### ACQUISITION BY FOREIGNERS

According to the Law no. 7501 of 19.07.1991 "On land", together with the Law no. 7980 of 27.07.1995 "On land purchase," foreign citizens may not purchase land in the territory of Albania.

Nevertheless, according to art. 5 of the Law no. 7980 of 27.07.1995 "On land purchase," Albanian commercial companies owned by foreign citizens that conduct investments in Albania as provided for in the Law no. 7764 of 02.11.1993 "On foreign investments" have the right to purchase real estate under the special conditions provided by the law. No restriction is provided for other types of real estate other than land.

## PREEMPTION RIGHTS

Article 204 of the Albanian Civil Code provides for the preemption right of the co-owner in case of joint ownership. The co-owner willing to sell must notify the other owners in writing on his intentions. If the other owners do not notify their disagreement within three months upon receipt of the notification, the co-owner has the right to sell his part of immovable property. The former co-owner must notify the other co-owners of the new owner.

## Special Legal Protections for Parties

According to article 563 of the Albanian Civil Code, the Seller has a mortgage by operation of law for the payment of the purchase price for the real estate.

## Construction and Use Restrictions

### CONSTRUCTION

Law no. 8405 of 17.09.1998 "On urban planning" provides that any construction in Albania shall be authorized by a municipal administrative body called the Council for Territory Regulation. For constructions of national importance the law provides that construction permit as well as urban studies and zonings should be approved by an independent body under the Albanian Council of Ministers called the Council for Territory Regulation of the Republic of Albania.

According to the Law "On urban planning", the administrative authorization ("construction permit") is issued only under the conditions provided for in the law, which include inter alia conformity with zoning and planning, as well as technical and safety requirements.

### USE RESTRICTIONS

The use restrictions on property consist in a series of provisions of the Albanian Civil Code, which make concrete the general principle stated in Article 159: "The

owner is free in the use of ownership, as long as he respects the rights of others, the law and the principles of good practice.”

### **Leasehold Types**

The lease contract is regulated by art. 801 ss of the Albanian Civil Code. Written form is necessary for lease contracts concluded for a duration of more than a year. Lease contracts for residential purposes cannot be concluded for a term of more than five years. No lease contract can be concluded for a period longer than thirty years.

The Albanian Civil Code regulates some special lease types such as the agricultural land lease, productive asset lease, and financial lease.

Albanian Civil Code provides for the right of preference of the lessee in case of renewal of the lease by the lessor.